

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on March 9, 1999 at 3:15 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Bob DePratu (R)
Sen. John Hertel (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Glenn Roush (D)
Sen. Debbie Shea (D)
Sen. Spook Stang (D)
Sen. Daryl Toews (R)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 129 HB 561 HB 601 HJR 25,
3/5/1999

Executive Action: None

HEARING ON HB 561

Sponsor: REPRESENTATIVE STEVE GALLUS, HD 35, Butte

Proponents:

Pat Saindon, MT Department of Transportation

Mike Foster, MT Contractors Association

Jim Kembel, MT Technical Council

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE STEVE GALLUS, HD 35, Butte, said this was an attempt to make things run a little more efficiently. He passed out a handout. **EXHIBIT**(his53a01). He allowed the department to explain the bill.

Proponents' Testimony:

Pat Saindon, MT Department of Transportation, stood in support of the bill. She explained that the bill would amend the financial district law that affects the primary system. Ms. Saindon explained the formula for distribution of the money. She said this bill would allow funding to be moved between financial districts. She expounded on **Exhibit(1)**. She made herself available for questions.

Mike Foster, MT Contractors Association, said they supported the bill because they believed it would definitely benefit the highway construction program. He applauded the department for the innovative approach.

Jim Kembel, MT Technical Council, said for reasons already stated by Mike Foster, they supported the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR HOLDEN, asked if the money that was going to be transferred back and forth would actually equate to the same dollars being spent in each district.

Pat Saindon, replied that the bill specified there had to be an equal payback.

SENATOR HOLDEN, said maybe one section might have need for more interstate money and another section might have needs for two-lane highways.

Pat Saindon, replied that was correct.

SENATOR COLE, asked if there was a time limit to pay back the money.

Pat Saindon, replied it would happen within the fiscal year.

SENATOR DEPRATU, asked if there would be a problem with the Federal program.

Pat Saindon, said the Federal Government did not recognize the financial districts, so there would be no problem.

SENATOR STANG, asked if we would be able to get a better match by doing this, or if the match would stay the same.

Pat Saindon, replied that different monies had different matches. If you spent interstate money you would get the interstate match and so forth.

SENATOR MOHL, made the comment they had worked on the language of this bill. He believed that this had ended up to be a very good bill.

Closing by Sponsor:

REPRESENTATIVE GALLUS, thanked the committee. He reiterated some points. He thinks this will make things run much smoother. He asked for their support.

HEARING ON HB 129

Sponsor: **REPRESENTATIVE JAY STOVALL, HD 16, Billings**

Proponents:

Allen Riley, Lockwood Fire Chief
Colonel Craig Reap, MT Highway Patrol
Douglas H. Neil, Montana State Fire mens Association
Pat Clinch, MT State Council of Professional Firefighters

Bob Gilbert, MT Tow Truck Association
Russ Ritter, Washington Corporation
Milo Casagrande, MHA
Jim Dusenberry, MTTA
Bill Fleiner, MT Sherif and Peace Officers Association

Opponents:

Al Smith, MT Trial Lawyers

Opening Statement by Sponsor:

REPRESENTATIVE JAY STOVALL, HD 16, Billings, stated who had worked on the bill. He explained that the bill would revise laws pertaining to highway hazards. He went through the sections of the bill and described what they would accomplish. He believed this bill would make accident scenes safer for responders and victims.

Proponents' Testimony:

Allen Riley, Lockwood Fire Chief, Billings, said he had seen a need for legislation to protect emergency workers while they worked on the Freeway. He believed that this would have far reaching affects in letting people know that crash scenes are scenes where traffic needed to slow down just like construction sites on the freeway. He maintained that the bill would also point out who the instant commander was on the scene of emergencies. He said the other part of the bill that was important was the area of signing.

Colonel Craig Reap, MT Highway Patrol, said he thought this was a good bill for the protection of all workers. He requested the committee's support.

Douglas H. Neil, Montana State Firemen's Association, said that being one of the firefighters that responds to accidents on the interstate, he saw a real need for this bill. He urged the committee to support the bill.

Pat Clinch, MT State Council of Professional Firefighters, he said he supported the bill just like previous speakers for the safety of firefighters.

Bob Gilbert, MT Tow Truck Association, said they supported the bill.

Russ Ritter, Morris Kuntson, said they had supported legislation last term to double the fines in areas where there were highway

construction projects taking place. He felt the same principal was involved in this bill. He thought there ought to be legislation to prevent accidents of any nature, and he thought this was necessary.

Milo Casagrande, Butte, said this bill would be good for tow truck operators. He asked for support.

Jim Dusenberry, J and D Truck Repair, said they were constantly out on the highway picking up large wrecks, and he felt that this was a very good bill for his industry.

Bill Fleiner, MT Sherif and Peace Officers Association, said they were involved with all that took place to bring this bill forward today. He said they were very much supportive of all aspects of the bill.

Opponents' Testimony:

Al Smith, MT Trial Lawyers Association, submitted written testimony. **EXHIBIT** (his53a02)

Questions from Committee Members and Responses:

SENATOR STANG, asked if it was the sponsor's intention to provide immunity, or just to see that people who were traveling in hazardous areas be ticketed.

REPRESENTATIVE STOVALL, said both. He believed there should be limited liability for those people helping in an accident scene.

{Tape : 1; Side : B; Approx. Time Counter : 356; Comments : turn tape over}

SENATOR STANG, asked if a fireman had driven to an accident with his lights on, and someone came through the accident scene and hit the fireman and the car he was working on, what liability the fireman and the person who caused the accident would have.

Al Amith, replied that under current law the person who hit the fireman would be liable, unless the fireman did not have his lights on.

SENATOR STANG, wondered in the same example used above the firemens lights had gone off, who would be liable.

Al Smith, said if the lights on the fire truck were out, it would have to go to a jury and they would have to determine who was

more at fault. He maintained that the immunity in emergency situations would be lost because the lights on the truck were not going.

SENATOR STANG, asked if there was any change in liability in the same situation if this bill passed.

Al Smith, said this bill would not affect an emergency situation.

SENATOR STANG, asked for further explanation.

Al Smith, said this bill required that the lights be going so it would have to be decided by a jury as well.

SENATOR DEPRATU, asked if this bill wouldn't help to prevent unnecessary litigation.

Al Smith, agreed that there were times when suits were filed that should not have been filed. He maintained that frivolous lawsuits did not happen very often however and he believed that it was bad public policy to make laws based on unsubstantiated fears.

SENATOR COLE, asked where the immunity that Al Smith had discussed was on pages 7 and 10.

Al Smith, replied page 7, lines 14 through 20 and page 10 lines 3 through 7.

SENATOR COLE, asked if the sponsor felt that those areas should be looked at again or if he felt differently about the interpretation of the bill.

REPRESENTATIVE STOVALL, said he believed that should be worked out with the people who had worked out the bill in the subcommittee, and he would go along with whatever they decided.

SENATOR DEPRATU, asked how often an officer would feel crowded or threatened by the traffic coming by them.

Col. Reap, believed his officers would say all the time. Sometimes are worse than others, but it was definitely a concern all the time.

SENATOR STANG, said it appeared that section 4, before being amended, read hazardous material instant response teams were not liable under this part for anything. He believed that the amendment that added except for willful misconduct, gross negligence, and bad faith, put the burden of proof on those

people to prove they weren't negligent. He wondered if these people were being opened up to more exposure than before.

REPRESENTATIVE STOVALL, replied he hoped that was not the case because it was certainly not the intent.

Bill Fleiner, maintained that anyone could be sued for anything. He remarked that on page eight it said "if highway warning signs were posted by operators of emergency vehicles" then section seven applied, the doubling of fines. He said that sometimes using the lights and sirens created as many problems as they were supposed to prevent.

SENATOR STANG, redirected the question to Al Smith.

Al Smith, said he couldn't say why exactly the team that drafted the legislation had put that in the language. He believed that people would not be open to more liability exposure with the amendment.

SENATOR HOLDEN, said that from Al Smith's testimony he understood that tow truck operators were immune from liability even when they were not responding to an accident. He asked where in the bill Al Smith was interpreting that to be the case.

Al Smith, said he saw this bill going beyond an emergency situation when the tow truck drivers were there by themselves cleaning up the scene, after law enforcement had left. He didn't see how that was an emergency under this bill or current law.

SENATOR HOLDEN, asked for specific pages and line numbers, that lead to Al Smith's interpretation.

Al Smith, said page seven, line 17.

SENATOR HOLDEN asked then, if the one word this hinged on was "hazard".

Al Smith, said "the assistance of a highway crash scene or response to any other hazard", was not a definition of an emergency.

SENATOR HOLDEN, asked Bob Gilbert who helped draft the tow truck immunity exemption language.

Bob Gilbert, replied Sue Fox had drafted the bill.

SENATOR HOLDEN, asked if at the time of the subcommittees work if the trial lawyers had objected to where the immunity concepts were placed in statute.

Bob Gilbert, said the only objection he had heard was in the House Committee hearing. He maintained that it was very important from the tow truck perspective, that they be covered during a hazardous situation. Their greatest danger is after the emergency is over and there is a hazard, and the danger is greater to the tow truck operator because law enforcement had left the scene.

SENATOR MOHL, asked the sponsor if he was talking strictly interstate work or if all highways were included.

REPRESENTATIVE STOVALL, replied all highways.

SENATOR MOHL, asked if an individual came up on an accident what their liability would be.

Al Smith, referred to the good Samaritan statute.

Closing by Sponsor:

REPRESENTATIVE STOVALL, thanked the committee for a good hearing. He said that all the entities involved in this bill, worked on it for three weeks, and he believed had really worked out what the intent should be. He commented that this bill was dealing with professionals and that they shouldn't worry that they wouldn't do their job properly, and limited immunity should not be a concern. He contended that he had kept hearing that this would be unconstitutional, but he thought that would be left up to the courts. He maintained that this bill, the way it was drafted now, was for safety of responders in emergency situations. He would appreciate a favorable vote on it.

HEARING ON HB 601

Sponsor: **REPRESENTATIVE MATT BRAINARD HD 62, Missoula**

Proponents:

Tim Vacca, Drive Montana

Steve White, Montana Coalition of Home Educators

Opponents:

Tom Daubert, MT Traffic Education Association

Gail Gray, MT Office of Public Instruction

Tom Harrison, AAA of Montana
Dan Purcell, self

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD HD 62, Missoula, said there was a severe shortage of drivers or traffic education in the state. He maintained that HB 601 was a committee bill, because the committee had realized that they needed to expand traffic education in the state and make it more available for kids who are trying to get a license. **{Tape : 2; Side : A; Approx. Time Counter : 421; Comments : switch to tape 2}** He continued that high schools were unable to fill the demand for drivers' education. He pointed out particular language dealing with the rules, set forth by the Office of Public Instruction. He said that the average driving time of students in the highschool drivers ed program was four hours. He did not think that was enough time to teach a kid how to drive. He contended that most kids were learning how to drive in their parents car. He repeated that drivers education was a safety course, and he believed this would allow that safety to be taught. He made himself available for questions and reserved the right to close.

Proponents' Testimony:

Tim Vacca, Drive Montana, submitted written testimony.
EXHIBIT (his53a03)

Steve White, Montana Coalition of Home Educators, submitted his written testimony and letters and testimony of those who could not attend the hearing. **EXHIBIT (his53a04)**

Opponents' Testimony:

Tom Daubert, MT Traffic Education Association, said that the amendments that the House adopted caused them to be in strong opposition of the bill. He maintained that the bill was ill conceived and poorly worded. He also believed that it invited some serious safety hazards on the road. He further explained his opposition, and he hoped the committee could kill the bill or at the least heavily amend it.

Gail Gray, MT Office of Public Instruction, emphasized that Montana Public Schools train over 10,600 students a year. Also the drivers education program is dedicated to giving access to everyone no matter where they went to school. She remarked for the previous stated reasons she opposed the bill.

Tom Harrison, AAA of Montana, said they were particularly concerned with the equipment safety features of the bill. He was concerned that commercial operators would be on the road all day without markings or safety equipment, and he felt those items were very important. He said the equipment was available through AAA at cost. He maintained that the bill should be substantially amended or should die.

Dan Purcell, self, said he had taught traffic education for 11 years. He opposed the bill because he believed it as unnecessary, unresearched, and did nothing to improve safety on Montana's highways. He expressed some further concerns, and asked the committee not to support the bill.

Questions from Committee Members and Responses:

SENATOR HERTEL, asked if students that completed drivers training were qualified for a rate reduction in insurance.

Gail Gray, said some insurances allowed that for a discount and some did not.

SENATOR HERTEL, asked Mr. Vacca if his program would qualify students for insurance benefits.

Tim Vacca, said some would and some would not.

SENATOR STANG, asked if he wanted to be a drivers training instructor what he would have to do.

Gail Gray, said under the current requirements to be certified under the Office of Public Instruction he would have to be a certified teacher and take an additional 20 credits to be qualified.

SENATOR STANG, said he could understand most of the requirements but asked why he needed a valid teacher's certificate.

Gail Gray, said there were a number of reasons, but mostly school districts like to hire certified teachers, because they had lots of training when it came to behavior modification and putting curriculum together, and understand growth and development of children at various ages.

SENATOR STANG, asked if that requirement was eliminated but leave all the others in place, if there would be a way to make sure that people who were training drivers were certified.

Gail Gray, said there would be a method to do that.

SENATOR STANG, asked if they eliminated the requirement for the teachers certification, would Mr. Vacca become an approved instructor.

Tim Vacca, said he would become certified with the state.

SENATOR DEPRATU, asked Mr. White if the homeschool association would object to a required curriculum.

Steve White, replied they would not object to that.

SENATOR DEPRATU, asked if the sponsor would have any problem with requiring a for-profit driving school to have safety equipment of their vehicle.

REPRESENTATIVE BRAINARD, replied that seemed perfectly reasonable to him.

SENATOR COLE, asked how many students were denied instruction and if there were a way to make sure everyone would be allowed to take the class.

Gail Gray, said they were committed to allowing access for everyone. She did not think a lot of students had trouble getting into the class.

SENATOR COLE, asked if they thought they could handle all the students that wanted to get into the class.

{Tape : 2; Side : B; Approx. Time Counter : 512; Comments : turn tape over}

Gail Gray, said they would make a concerted effort to train more people in the area and particularly look at areas in the state that they had problems with.

SENATOR STANG, asked Mr. White if their association would mind if they were limited to teaching their own children.

Steve White, replied that if it meant that a homeschool parent had to go to Havre for twenty hours of certification that would be totally impractical. He said he could see that a number of parents might get together and pay for one parent to take the task on and teach the other students. He said it would depend on the requirements.

Closing by Sponsor:

REPRESENTATIVE BRAINARD, said he thought it might be good to create a private sector because of the potential it would create jobs. He maintained that statistics show that youthful drivers have a higher rate of accidents. He wondered how successful drivers education was and if the needs were being fulfilled. He said he didn't see the need for a certified teacher to teach drivers education. He made reference to page two of the bill. He said he would work out amendments if needed, and thanked the committee for a good hearing.

HEARING ON HJR 25

Sponsor: **REPRESENTATIVE KIM GILLIAN, HD 11, Billings**

Proponents:

Gail Gray, MT Office of Public Instruction

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE KIM GILLIAN, HD 11, Billings, said she brought this bill on behalf of the Montana Parent Teacher Association. She said this resolution would help push for uniformity in speed limits in school zones. She said it was not a mandate but an encouragement to set school zone limits at 15mph.

Proponents' Testimony:

Gail Gray, MT Office of Public Instruction, said because of the late hour she would just state that they were in support of the bill for the safety of kids.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR STANG, asked if this would work.

Gary Gilmore, MT Department of Transportation, said he did not know if it would work, but the encouragement might elevate requests for speed zone studies around schools.

Closing by Sponsor:

REPRESENTATIVE GILLAN, said the bill passed fairly well on the floor of the House. She thought it was an important step in the right direction and hoped the committee would vote yes.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. ARNIE MOHL, Chairman

PHOEBE OLSON, Secretary

AM/PO

EXHIBIT (his53aad)